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State v. Milligan Appellant's Reply Brief Dckt. 43735

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43735
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO.
v.)	CR 2015-2790
)	
BRIAN ALEXANDER MILLIGAN,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Brian Alexander Milligan appeals from the district court's Judgment and Sentence. Mr. Milligan was sentenced to a unified sentence of nine years, with four years fixed, following his guilty plea to delivery of a controlled substance. Mr. Milligan asserts that the district court abused its discretion by sentencing him to an excessive sentence without giving proper weight and consideration to the mitigating factors that exist in this case. Furthermore, Mr. Milligan asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

This Reply Brief is necessary to address the State's assertion that the district court had lost jurisdiction prior to ruling on Mr. Milligan's Rule 35 motion.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Milligan's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUES¹

1. Did the district court abuse its discretion when it imposed, upon Mr. Milligan, a unified sentence of nine years, with four years fixed, following his plea of guilty to delivery of a controlled substance, methamphetamine?
2. Did the district court abuse its discretion when it denied Mr. Milligan's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Milligan's Rule 35 Motion For A Reduction Of Sentence

In its Respondent's Brief, the State asserted that the court had lost jurisdiction to rule on Mr. Milligan's Rule 35 motion." (Respondent's Brief, p.3.) However, Mr. Milligan asserts that the district court did not lose authority to rule on his motion because the district court ruled within a reasonable time.

Under Rule 35, a district court "may reduce a sentence within 120 days after the filing of a judgment of conviction," and "may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation." I.C.R. 35(b). However, the Idaho Supreme Court has held "a district court does not lose jurisdiction to act upon a timely motion under Rule 35 merely because the 120-day period expires before the judge reasonably can consider and act

¹ This Reply Brief will not address Mr. Milligan's first issue on appeal as the State's arguments are unremarkable and, as such, do not require any further argument.

upon the motion.” *State v. Chapman*, 121 Idaho 351, 354 (1992) (internal quotation marks omitted). In *Chapman*, the court acknowledged that the limit “protects judges against repeated importunities by those sentenced and it ensures that the court does not usurp the responsibilities of parole officials by retaining jurisdiction indefinitely and acting on the motion in light of the movant’s conduct in prison.” *Id.* at 353, quoting *United States v. Smith*, 650 F.2d 206, 208 (9th Cir.1981). Although mindful of these underlying policies, the *Chapman* court determined that a strict interpretation of the normal 120-day limitation would be highly impractical and could cause the trial court to lose jurisdiction without ever having a chance to consider the motion. *Id.* As an alternative, the court read the rule broadly and found that:

[a]llowing a trial court to rule within a “reasonable” time will allow the court to fulfill its own duties, yet will prevent cases in which the defendant files a Rule 35 motion at the very end of the 120-day period, for instance on the 119th day, leaving the court only one day to rule on the motion.

Id. at 353-54. Accordingly, if a Rule 35 motion is timely filed, district courts have a reasonable time within which they must decide the motion.

The Idaho Supreme Court has held that the district court’s delay in ruling on a Rule 35 must be “reasonable,” and a significant factor of the reasonableness of the delay is the extent to which the delay was caused by circumstances beyond the defendant’s control. *Id.* at 354-55. It is defense counsel’s responsibility to request that the district court make a ruling on a Rule 35 motion within a reasonable time frame, or otherwise provide an adequate record and justification for the delay, to avoid the risk of the trial court losing jurisdiction. *State v. Day*, 131 Idaho at 184, 186 (Ct. App. 1998).

The Idaho Supreme Court has held that delaying a ruling while waiting for the defendant to come up with additional materials to support his Rule 35 motion is

reasonable. In *State v. Book*, 127 Idaho 352, 355-56 (1995), the district court took nine months to rule on the defendant's Rule 35 motion "in order to give [the defendant] time to gather additional materials, and then ruled shortly after the information was received." *Id.* In reaching this holding, the Idaho Supreme Court cited approvingly of *State v. Brydon*, 121 Idaho 890 (Ct. App. 1992) (*overruled on other grounds by State v. Tranmer*, 135 Idaho 614 (Ct. App. 2001)), for the proposition that "a delay in ruling in order to receive additional information is not unreasonable." *Book*, 127 Idaho at 355. Although *Brydon* has since been overruled by the Court of Appeals insofar as it "condone[d] a trial court's purposeful delay in ruling on a Rule 35 motion simply in order to consider a defendant's subsequent conduct while incarcerated," *Tranmer*, 135 Idaho at 618, it is obviously still good law for the proposition for which it was cited by the Supreme Court in *Book*.

Additionally, in *State v. Maggard*, 126 Idaho 477, 479-80 (Ct. App. 1994), which came after *Brydon*, but before *Tranmer* and *Book*, the Court of Appeals implicitly reaffirmed the core holding of *Brydon*. In that case, the Court of Appeals held that there was an insufficient record to determine that the district court's delay in ruling on the defendant's Rule 35 motion was reasonable and, in doing so, pointed out that "[t]here is no indication in the record that Maggard requested additional time to supplement the record or that he intended to submit any additional evidence after the motion was filed," thereby implying that had the defendant done so, the delay might have been reasonable. *Maggard*, 126 Idaho at 479.

Mr. Milligan's Rule 35 motion was filed on December 30, 2015, 78 days after the district court's Judgment and Sentence was filed. (R., p.102.) The district court issued

a Notice of Intent to Dismiss Defendant's I.C.R. 35 Motion for Failure to State Basis for the Motion providing Mr. Milligan with a month to provide additional materials. (R., pp.104-106.) Mr. Milligan provided a response prior to end of the deadline, on February 5, 2016, 115 days after the Judgment and Sentence was filed. (R., pp.107-109.) Mr. Milligan had requested a hearing in the original motion and a hearing was scheduled on April 1, 2016, for April 28, 2016. (Register of Actions.)² The hearing was rescheduled on April 4, 2016, to May 6, 2016. (Register of Actions.) The district court held the Rule 35 hearing on May 6, 2016. (Augmentation: Court Minutes from the 5/6/16 Rule 35 Hearing.) Although the Court did not file the Order Denying Defendant's Rule 35 Motion until 13 days later, the district court denied the motion at the hearing. (Augmentation: Court Minutes from the 5/6/16 Rule 35 Hearing; Augmentation: Order Denying Defendant's Rule 35 Motion.) As such, the motion was denied 206 days after the Judgment and Sentence was filed, 128 days after the motion was filed, and 91 days after the supplemental information was filed. As such, the motion was resolved less than five months after it was timely filed and as soon as the district court was able to schedule a hearing on the motion.

Although Mr. Milligan acknowledges that an order was not issued upon his Rule 35 motion for 128 days, he asserts that the district court did not lose jurisdiction because the delay was attributable to his need to supplement with new and additional information and to allow the district court to schedule a hearing on the motion. Just as was the case in *Book* and *Brydon*, the delay here was reasonable. This is especially true in light of the Idaho Supreme Court's holding in *Book* where the total delay was

² A Motion to Take Judicial Notice of the updated Register of Actions was filed contemporaneously with this brief.

nine months. *Book*, 127 Idaho at 355-56. Therefore, Mr. Milligan asserts this Court can address the question of whether the district court abused its discretion in denying his Rule 35 motion on the merits.

CONCLUSION

Mr. Milligan respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 6th day of September, 2016.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of September, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas